

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM NORMAN,

Defendant-Appellant.

UNPUBLISHED

December 16, 2004

No. 249493

Wayne Circuit Court

LC No. 02-012626-01

Before: Meter, P.J., and Wilder and Schuette, JJ.

PER CURIAM.

Defendant was charged with assault with intent to commit murder, MCL 750.83, and charged with felon in possession of a firearm, MCL 750.224f, and felony-firearm, MCL 750.227b. Defendant was acquitted of the first charge and convicted of the latter two. Defendant appeals by right his jury conviction for felon in possession of a firearm, MCL 750.224f, and felony-firearm, MCL 750.227b. We affirm.

I. FACTS

The charges arose from an incident where three people attempted to repossess a vehicle owned by defendant's wife. Two of the individuals went into defendant's garage and were attempting to repossess the car when two shots were fired at them. Defendant then came out of the home and fired a shot at the third individual, who was operating the truck needed for the repossession. One of the individuals was shot in the foot. Upon investigation of the home, officers found a shot gun, rifle, and a revolver. On appeal, defendant challenges the scoring of sentencing guidelines variables OV 1 and OV 3.

II. STANDARD OF REVIEW

The existence or nonexistence of a particular factor is a factual determination for the sentencing court, and is reviewed for clear error. *People v Fields*, 448 Mich 58, 77; 528 NW2d 176 (1995). Scoring decisions under the sentencing guidelines are not clearly erroneous if there is any evidence to support the decision. *People v Witherspoon*, 257 Mich App 329, 335; 670 NW2d 434 (2003).

III. ANALYSIS

OV 1, aggravated use of a weapon, provides for a score of 25 points if a firearm is discharged at or toward a human being. MCL 777.31(1)(a). OV 3, physical injury to victim, provides for a score of 10 points if the victim receives a bodily injury requiring medical treatment. MCL 777.33(1)(d).

Defendant argues that because he was acquitted on a charge of assault with intent to murder, the court was required to find that there was insufficient evidence to show that he fired a weapon or caused an injury. Scoring of the sentencing guidelines need not be consistent with a jury verdict where the jury is required to apply the reasonable doubt standard, and the sentencing court applies a preponderance of the evidence standard. *People v Ratkov (After Remand)*, 201 Mich App 123, 125-126; 505 NW2d 886 (1993). Where defendant made an incriminating statement to police, gunshot residue was found on his hands, one of the complainants testified that he saw defendant fire the weapon, and another of the complainants was actually wounded, the scoring decision was supported by evidence on the record.

Affirmed.

/s/ Patrick M. Meter
/s/ Kurtis T. Wilder
/s/ Bill Schuette